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Supreme Court of the United States.

OCTOBER TERM, 1902.

ED. E. REID, Appellant,
vs.
JESSE T. JONES, Sheriff of Arapahoe County, Colorado,
Appellee.

No. 147.
Original Docket.

Appeal from the Circuit Court of the United States for the District of Colorado.

ED. E. REID, Plaintiff in Error,
vs.
THE PEOPLE OF THE STATE OF COLORADO,
Defendants in Error.

No. 259,
October Term.

Writ of Error to the Supreme Court of the State of Colorado.

Brief and Argument of Appellant and Plaintiff in Error.

ED. E. REID.

CALDWELL, DENISON & CADLEY,
Attorneys for Appellant and Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

ED. H. REID, *Appellant*, v. ROBERT J. JONES, SHERIFF OF ARAPAHOE COUNTY, COLORADO, *Appellee*.	*No.* 147. *Habeas Corpus*.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

ED. H. REID, *Plaintiff in Error*, v. THE PEOPLE OF THE STATE OF COLORADO, *Defendants in Error*.	*No.* 269. *Criminal*.

WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF COLORADO.

BRIEF AND ARGUMENT OF APPELLANT AND PLAINTIFF IN ERROR, ED. H. REID.

STATEMENT OF FACTS.

The plaintiff in error and appellant was convicted and sentenced to the county jail for six months for violations

of the provisions of Section 2, of an act of the General Assembly of Colorado, entitled, "An act to prevent the introduction of any infectious or contagious disease among the cattle and horses of this State," approved March 21, 1885, and hereinafter set forth.

There is no dispute about the facts. The plaintiff in error, as charged in the information, on the 20th day of June, 1901, caused to be brought into the State of Colorado 882 head of cattle from the counties of Lubbock and Cochran, in the State of Texas, which are south of the so-called quarantine line fixed by the act, without having held the cattle at some place north of said line for a period of ninety days prior to their importation into this State, and also without having procured from an officer or agent of the State Veterinary Sanitary Board of the State of Colorado a certificate or bill of health.

Case No. 269, fols. 36–40, Trans. Rec.

On the 18th of June, 1901, when these cattle were shipped, the plaintiff in error obtained from the Inspector of the United States Bureau of Animal Industry at Hereford, Texas, the point of shipment, a certificate that the stock were free from all infectious disease, and that no Texas fever infection was known to exist where they had been kept, or on the trail over which they had passed. Attached to this certificate and below the officer's signature was a statement that animals which had been inspected and certified by an inspector of the United States Bureau of Animal Industry as free from disease have the right to go into any State without further inspection or the exaction of additional fees for the same.

Case No. 269, Exhib. B, Trans. Rec., fol. 48.

When, two days later, they reached the south boundary of Colorado, the cattle were, *vi et armis.*, inspected by

an agent of the State veterinary board of Colorado—against the protest of plaintiff in error—but no certificate or bill of health was furnished to him, because he declined to pay the fee charged to cover the cost of inspection which was required by the specific regulations of the State board. Trial and conviction followed.

Neither in the act of Congress nor in the rules of the Secretary of Agriculture is the sweep, extent or limit of certificates issued by the Bureau of Animal Industry defined, save and except by D. E. Salmon, Chief of the Bureau of Animal Industry.

Case No. 269, Exhib. C, fols. 48–50, Trans. Rec.

The provisions of the Federal Constitution touching interstate commerce are as follows: "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

U. S. Const., Art. 1, Sec. 8, par. 3.

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

U. S. Const., Art. 4, Sec. 2, par. 1.

"No State shall, without the consent of Congress, lay any imposts or duties or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

U. S. Const., Art. 1, Sec. 10, par. 2.

The legislative enactments of Congress are as follows: "An act for the establishment of a Bureau of Animal Industry to prevent the exportation of diseased cattle, and to provide means for the suppression and extirpation of

pleuro-pneumonia and other contagious diseases among domestic animals."

Supplement to Revised Statutes U. S., Vol. 1, pp. 435–6, Chap. 60, Secs. 3, 6 and 9.

The rules and regulations governing the operations of the Bureau of Animal Industry, as promulgated by the United States Department of Agriculture in 1900, are embraced in the transcript of record, case No. 269, Exhibit A, fols. 41–47.

The view taken by Dr. D. E. Salmon, Chief of the Bureau of Animal Industry, of the regulations of the Department, and his construction and interpretation thereof, are found in the transcript of the record, case No. 269, Exhibit C, fols. 48–50.

The Colorado statute, which plaintiff in error and appellant contends is in conflict with the Constitution and Statutes of the United States and with the rules and regulations of the Bureau of Animal Industry, is as follows, to-wit:

"It shall be unlawful for any person, association or corporation to bring or drive, or cause to be brought or driven into the State, between the first day of April and the first day of November, any cattle or horses from a State, territory or county, south of the thirty-sixth parallel of north latitude, unless said cattle or horses have been held at some place north of said parallel of latitude for a period of at least ninety days prior to their importation into this State, unless the person, association or corporation, owning or having charge of said cattle or horses, shall procure from the State veterinary sanitary board a certificate or bill of health to the effect that said cattle or horses are free from all infectious or contagious diseases and have not been exposed, at any time within ninety days prior thereto, to any of said diseases. The

expense of any inspection connected therewith to be paid by the owner or owners of such cattle or horses."

Mills Ann. Stat., Vol. 2, Sec. 4288, case No. 269, fol. 70, Trans. Rec.

The two consolidated causes arise out of the same transaction and involve the same question, namely: Whether the statute of the State of Colorado and the inspections and fees required thereunder, are in violation of the Constitution and laws of the United States, and the rules and regulations of the Department of Agriculture as fixed by the Bureau of Animal Industry? In other words, is interstate commerce, to-wit, the transportation from State to State of live stock, the owner of which holds a certificate, or bill of health, duly issued by an inspector of the United States Bureau of Animal Industry, unnecessarily burdened by the detention of the cattle at the State line for the purposes of such inspection and the imposition of charges upon the shipper?

Errors Assigned.

Plaintiff in error, as ground for reversal of the judgment of the Supreme Court of the State of Colorado, relies upon the errors following, to-wit:

First.—The court erred in not deciding that the conviction of the plaintiff in error was illegal.

Second.—The court erred in deciding that the statute of the State of Colorado, approved March 21, 1885, and under which plaintiff in error was prosecuted and convicted, is not repugnant to the provision of the Constitution of the United States giving Congress power to regulate commerce among the States, to-wit, Article 1, section 8, subdivision 3, of the Constitution of the United States,

as well as to the provision declaring that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, to-wit, Article 4, section 2, of the Constitution of the United States.

THIRD.—The Congress of the United States, having passed an act establishing a Bureau of Animal Industry, to-wit, the act printed in Volume 1, p. 435, chapter 60, sections 3, 6, and 9, Supplement Revised Statutes of the United States, and said Bureau of Animal Industry, having promulgated its rules in pursuance of said act, in the regulation of the exportation from this country, and the importation into this country, and the transportation of domestic animals from one State into another, the court erred in not declaring the statute of the State of Colorado, approved March 21, 1885, under which this prosecution was had, to be null and void, as imposing unnecessary burdens and restrictions upon interstate commerce.

FOURTH.—The court erred in failing and refusing to reverse the judgment of the district court of the county of Arapahoe, State of Colorado, and in not discharging plaintiff in error.

Case No. 269, fol. 17, Trans. Rec.

ARGUMENT.

WHEN A STATE MAY ACT.

FIRST.—In the absence of Federal legislation upon the subject, we concede that any State in the Union may legally pass reasonable and necessary sanitary inspection and quarantine laws in order to prevent animals suffering from contagious and infectious diseases from entering its borders, even though the result be to place burdens inci-

dentally upon interstate commerce in the transportation of live stock from one State to another.

Act in Question Unreasonable.

Second.—We deny that the act in question is reasonable or necessary. We deny that the fee imposed is "absolutely necessary for executing" it. We also deny that the act is permissible at all upon a matter of interstate commerce which Congress has seen fit to regulate by statute, which should be uniform throughout the Union.

Appellant's Contention.

Third.—The position of plaintiff in error and appellant is, that where the shipper has had his cattle inspected by an inspector of the United States Bureau of Animal Industry and has received a clean bill of health, such as appellant possessed, and has exhibited the same to the State sanitary officer, he has the legal right to ship such cattle through any State or States in the Union, without being subject to delay or inspection at any State line and without being compelled to pay a fee to any State through which the cattle may pass on their way to the point of ultimate destination.

Appellee's Contention.

Fourth.—The position of counsel for State of Colorado is, that it is the plain intention of Congress that national and State governments should co-operate in preventing the spread of communicable diseases among domestic live stock, and that neither the Federal act nor the State statute is a regulation of interstate commerce, but that the statute

is a mere quarantine or inspection law. It is further claimed that Congress has not assumed exclusive jurisdiction over the subject-matter, and that its request for State aid and co-operation gives license to each State to pass similar regulations and enforce compliance therewith.

Colorado Statute Nullifies Act of Congress.

Fifth.—Against this position counsel for plaintiff in error and appellant maintain that the Colorado statute interposes a direct prohibition against the introduction into said State, during seven months in the year, of cattle from any State south of a certain parallel of north latitude, unless they shall have been held at some place north thereof for a period of ninety days, or unless the person in charge thereof shall have procured a bill of health from the Colorado veterinary sanitary board, to obtain which the expenses thereof shall be paid by the owner, and that this is done without reference to the Federal inspection laws and without any reservation, exception, or distinction being made in the terms of the State statute in favor of the holder of a clean bill of health issued by and under the authority of the United States Bureau of Animal Industry. This is not co-operation but nullification. The record shows that appellant's cattle were absolutely free from all infectious or contagious diseases. The offense in the case at bar consists, therefore, in the fact that appellant relied upon the bill of health issued by the inspector of the United States Bureau of Animal Industry. What he did was to refuse to pay for a wholly unnecessary and unauthorized second inspection, inasmuch as his cattle were then and there healthy, and inasmuch as the highest authority of the national Government had so certified.

SIXTH.—Adopt any other view, and it must follow that if appellant, when he shipped his cattle from Texas through Colorado, had billed them to a more remote point than Wyoming, he would have been subject to inspection as he crossed the State line of every State through which he passed, notwithstanding there is Federal legislation upon this subject, and notwithstanding the transportation of cattle from State to State has been declared to be interstate commerce, and notwithstanding he held a certificate or bill of health from the Federal inspector. The stoppage of his cattle alone is a burden to be endured only when necessity therefor exists, and it is certainly an anomalous condition of affairs that the State of Colorado should have the right to exact an enforced second inspection of the very cattle which the Government of the United States had inspected and had declared to be free from disease of every character, immediately prior to shipment. To compel the shipper, under these circumstances, to pay for such second inspection, and upon failure to do so to find him guilty of violation of law, in spite of the fact that his cattle were healthy and were so certified to be by an officer of the United States Bureau of Animal Industry, seems to us contrary to good conscience and a practical nullification of the Federal statutes and the rules and regulations of the Bureau of Animal Industry promulgated in pursuance thereof.

TRANSPORTATION OF LIVE STOCK IS A BRANCH OF INTERSTATE COMMERCE.

SEVENTH.—We take it as an established fact, that the transportation of live stock by rail or by water course from State to State, is a branch of interstate commerce.

Han. & St. J. R.R. Co. *v.* Husen, 95 U. S. 465, 469.

Is the Colorado Statute a Regulation of Interstate Commerce?

Eighth.—The ground upon which Congress has undertaken to provide for the inspection of live stock must be and is that it is a regulation of interstate commerce. The State statute must, therefore, be a regulation of interstate commerce. If it is not, then the Congressional act is not, and Congress is unwarrantably interfering in the matter.

We claim that the imposition of a tax for a second, third, fourth, or a fifth inspection at the State line, following upon the heels of an inspection by the Bureau of Animal Industry certifying a clean bill of health, coupled with the delay and expense necessarily incident thereto, amounts to a regulation, or interference with, or a restriction upon, the free passage of live stock from one State to another wholly unwarrantable and wholly beyond the necessities of the case. If this contention be answered affirmatively, then the Colorado statute, disregarding as it plainly does, and wholly annulling the effect of the Federal inspection, must be held to be in violation of Congressional regulations. This follows among other reasons from the fact that the State statute prescribes a rule concerning interstate transportation of cattle under color of an inspection law which wholly ignores or disregards the fact that Congress has legislated on that subject matter. Live stock, not only healthy in fact, but certified to be so by a United States inspector of the Bureau of Animal Industry, is stopped in transit on the borders of Colorado, and the shipper convicted of a violation of a State statute because he refused to pay for a second inspection.

NINTH.—The right of a State to pass quarantine and sanitary laws is self-defensive, and is among its reserved powers to conserve the safety of all persons and property within its limits, and until Congress intervenes by legislation thereon, any action taken by the State, reasonable and necessary in its scope, should be respected. It is imperative that legislation should be enacted in respect to matters of this kind. But it is equally true that Congress HAS legislated thereon. And the fact that Congress has done so precludes the State of Colorado from enacting this statute, if the same be unreasonable or unnecessary or cumulative or imposes grievous and unnecessary burdens upon the shipper engaged in interstate commerce, in excess of Congressional requirements. By way of analogy, it has been said that in the absence of legislation by Congress, a State may prescribe that engineers on interstate trains shall undergo an examination by a State board as to their mental and physical qualifications before becoming entitled to operate locomotive engines within that State. This power might, however, be exercised by Congress, and in that case would supersede any conflicting (or we will add) unnecessary and burdensome provisions on the same subject made by local authority.

State *v.* Alabama, 124 U. S. 465, 479–80.

REVIEW OF AUTHORITIES.

TENTH.—A review of the decisions bearing on interstate commerce, as affected by so-called police regulations of the State, shows that all State legislation, adjudged invalid by this court, either imposed a tax upon some subject of commerce, or exacted a license fee from the parties engaged in commercial pursuits, interstate in their nature, or created an impediment to the free navigation of public

waters or prescribed conditions in accordance with which commerce in particular articles or between particular places was required to be conducted. In all such cases the legislation condemned operated directly on interstate commerce, either by way of a tax upon its business or a license upon its pursuits in particular channels or conditions for carrying it on, unduly and unnecessarily imposed.

Sherlock *v.* Alling, 93 U. S. 99, 102.

COLORADO STATUTE REGULATES INTERSTATE COMMERCE.

ELEVENTH.—The Colorado statute directly regulates commerce between the States, for it materially affects the conduct of the shipper outside of the limits of the State. It imposes a tax or burden upon him, in that it exacts a fee from him for the reinspection of cattle in transit already inspected by Federal inspectors; it creates an impediment to the free transportation of his cattle over the territory, in that it necessitates stoppages; and, finally, it prescribes conditions, wholly unreasonable and unnecessary in their scope, in view of the possession by the shipper of a clean bill of health, issued to him by a United States inspector.

This statute is an attempt to compel the shipper about to transport his live stock from State to State, and holding a Federal inspection certificate or bill of health, to stop his cattle in transit, and at his own expense subject healthy cattle for the second time to the burden of reinspection.

THE HABER CASE.

TWELFTH.—In the case of the M., K. & T. R.R. Co. *v.* Haber, it is stated that Congress has full control over

interstate commerce, and that it is the only authority by which that commerce can be regulated, and yet upon the facts of that case opposing counsel in the court below mainly relied.

M., K. & T. R.R. Co. *v.* Haber, 160 U. S. 613.

An analysis of the Haber case shows that the State statute which was there violated only gave a cause of action for damages against persons who shipped diseased cattle into Kansas whereby domestic animals became infected. That provision could not possibly obstruct or embarrass interstate commerce. It regulated solely the injuries done to Kansas cattle, by others bringing into that State animals infected with contagious diseases. If a State statute, under the guise of police protection, should impose a tax, prescribe a duty, or work a delay or interference with shippers coming within its borders, the State enacting it would be *ipso facto* in the business of regulating interstate commerce. If, however, a State statute should only declare a general principle of law, governing the liability of persons within its jurisdiction, for the commission of torts, resulting in losses to others, it would not be in the business of interstate commerce nor interfering with nor regulating it. The imposition of a penalty for torts growing out of a violation of duty can never properly be said to be an obstruction to interstate commerce (*idem*, 623).

The Colorado Statute is Unreasonable and Unnecessary.

Thirteenth.—In the Husen case the decision was placed on the ground that while a State may prevent animals suffering from infectious diseases from entering

its borders, it may not, under cover of police power, substantially prohibit or burden interstate commerce, and the Missouri statute was held to be unconstitutional, solely because it went beyond the necessities of the case.

Han. & St. J. R.R. Co. *v.* Husen, 95 U. S. 465, 470–471.

FOURTEENTH.—The Colorado statute is subject to the same criticism. It also goes beyond the necessities of the case. Under the guise of self-protection, and under cover of quarantine regulation, it compels the shipper whose cattle have already been inspected by the agent of the United States Bureau of Animal Industry, not only to submit them to a reinspection, with attendant stoppage and delay, but to pay a fee therefor; it directly encroaches upon the national legislation, and adds to the inspection by the agent of the United States Bureau of Animal Industry a second inspection and a second stoppage, for the expense of which the shipper himself must stand good.

THE IDAHO CASE.

FIFTEENTH. The case of Rasmussen *v.* The State of Idaho, 181 U. S. 198, is distinguishable from the case at bar:

FIRST.—Because the Federal Government had not taken action on the subject of the importation of sheep into the State of Idaho, and so the Idaho statute could not conflict with, add to, detract from, or vary any Federal law, or nullify a Federal bill of health.

SECOND.—Because the sheep barred by the Idaho law were from an infected district, where scab was epidemic, and the prohibition was not a continuous act, as in the case at bar; but was one contemplating in every case an

investigation by the chief executive of the State, before any order of restraint was issued.

THIRD.—Because the importer of the sheep into the State of Idaho had not obtained, and did not have, a bill of health from an inspector of the United States Bureau of Animal Industry, as provided for by the Congressional act.

THE LOUISIANA-TEXAS CASE.

The case of Smith *v.* R.R. Co., 181 U. S. 248, involving the validity of the Texas quarantine laws, is distinguishable from the case at bar in this, that the cattle in question in that case had not been inspected by a Federal inspector and the owner did not have a Federal bill of health. Upon the record in that case, the presumption was that the cattle in question were actually affected with contagious and infectious diseases; and the right of a State to prohibit the importation of live stock so diseased is conceded. But cattle having a Federal bill of health are not only *prima facie* healthy and free from liability of communicating disease to other animals, but they are conclusively so. For, if a State might contest the truth of the Federal inspection, overrule it and disregard it, the State inspection and regulation would become superior to the Federal. Hence live stock, having a Federal health certificate, is a legitimate subject of interstate commerce, which no State can hinder, burden or suppress.

IN ABSENCE OF FEDERAL LEGISLATION.

SIXTEENTH.—We repeat what we have heretofore conceded, that the power to prevent the importation of diseased cattle into its borders, rests primarily, in the absence of Federal legislation, with the State, and such

importation may be prohibited by it in the exercise of its police power, if acting within the necessities of the case. But the power to prevent the importation into and passage of diseased or infected cattle through a State, over the great thoroughfares, railroads and waterways, is a regulation of interstate commerce, and belongs to the State only in the absence of Federal legislation. Whatever may be the power of the State over that particular commerce which is altogether confined within its borders, it cannot prohibit or regulate that which is interstate. The effect of the Colorado statute is to obstruct such interstate commerce, and it conflicts with the provision of the Constitution, that "Congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes."

Grimes *v.* Eddy, 126 Mo. 168.

SEVENTEENTH.—In the case of Kimmish *v.* Ball, it was properly held that the statute was leveled solely against allowing diseased Texas cattle, held and being within the State from running at large; and the court upheld the statutory provision, that whosoever permitted diseased cattle, in his possession, to run at large within the limits of the State should be liable for damages caused by the spread of the disease occasioned thereby.

Kimmish *v.* Ball, 129 U. S. 217, 222.

THE HUSEN CASE.

EIGHTEENTH.—In the Husen case this court used this language in reference to the statute of Missouri which totally prohibited, for the period of eight months in the year, the importation of Texas cattle into the State:

"It seems hardly necessary to argue at length that unless the statute can be justified as a legitimate exercise of the police power of the state, it is a usurpation of the power vested exclusively in Congress; a regulation extending to prohibition. Whatever may be the power of a State over commerce which is completely internal, it can no more prohibit or regulate that which is interstate than it can that with foreign nations. Power over one is given by the Constitution of the United States to Congress, in the same words in which it is given over to the other, and in both cases it is necessarily exclusive. That the transportation of property from one State to another is a branch of interstate commerce is undeniable, and no attempt has been made in this case to deny it. The Missouri statute is a plain interference with such transportation; an attempted exercise over it of the highest possible power—that of destruction. It meets at the borders of the State a large and common subject of commerce, and prohibits its crossing the State line during two-thirds of each year, with a proviso, however, that such cattle may cross the line, loaded upon a railroad car or steamboat, and pass through the State without being unloaded. But even the right of steamboat owners and railroad companies to transport such property through the State, is loaded by the law with onerous liabilities because of their agency in the transportation. The object and effect of this statute are, therefore, to obstruct interstate commerce, and to discriminate between the property of citizens of one State and that of citizens of other States. This court has heretofore said that interstate transportation of passengers is beyond the reach of a State legislature. And if, as we have held, State taxation of persons passing through one State to another, or a State tax upon interstate transportation of passengers, is prohibited by the Constitution be-

cause a burden upon it, *a fortiori*, if possible is a State tax upon the carriage of merchandise from State to State. Transportation is essential to commerce, or rather, it is commerce itself; and every obstacle to it, or burden laid upon it by legislative authority, is regulation."

H. & St. J. R. R. *v.* Husen, 95 U. S. 465, 472.

NINETEENTH.—And in the same case the court further says: "While we unhesitatingly admit that a State may pass sanitary laws and laws for the protection of life, liberty, health or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the State; while for the purpose of self-protection it may establish quarantine and reasonable inspection laws, it may not interfere with transportation into or through the State BEYOND WHAT IS ABSOLUTELY NECESSARY FOR SELF-PROTECTION. It may not, under cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce. Upon this subject the cases of 92 U. S., to which we have referred, are very instructive. In Henderson *v.* Mayor, etc., the statute of New York was defended as a police regulation to protect the State against the influx of foreign paupers; but it was held to be unconstitutional, because its practical result was to impose a burden upon all passengers from foreign countries. And it was laid down that, "In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect." The reach of the statute was far beyond its professed object, and far into the realm which is in the exclusive jurisdiction of Congress. * * * They (certain cases) deny validity to any State legislation professing to be an exercise of police power for protection against evils from abroad, which is beyond the

necessity for its exercise wherever it interferes with the rights and powers of the Federal Government. * * * The police power of a State cannot obstruct foreign or interstate commerce beyond the necessity for its exercise, and under color of it, objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. And as its range some times comes very near to the field committed by the Constitution to Congress, it is the duty of the courts to guard vigilantly against any needless intrusion."

H. & St. J. R. R. *v.* Husen, 95 U. S. 465, 472, 473.

TWENTIETH.—We ask whether, with an immediate antecedent Federal inspection of appellant's cattle, and certificate to their health and to the fact that no Texas fever was known to exist where they had been kept, or on the trail over which they had passed, there was any necessity whatsoever for the second inspection? If not, this court should deny the validity of the statute as interfering beyond what was necessary for self-protection with transportation into and passage through the State.

UNIFORMITY OF REGULATION.

TWENTY-FIRST.—It is a well-settled doctrine that a State can no more regulate or impede commerce among the several States than it can regulate or impede commerce among foreign nations. The power to regulate commerce among the several States is granted to Congress in absolute terms. If, in the absence of Congressional action the State may regulate matters of local interest, only incidentally affecting interstate commerce, still the power of Congress is exclusive, whenever the matter is NATIONAL IN ITS CHARACTER OR ADMITS OF ONE UNIFORM SYSTEM OR PLAN

OF REGULATION; and is, certainly, so far exclusive that no State has power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the States, as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other States, coming or brought within its jurisdiction.

Brown *v.* Houston, 114 U. S. 622.

See also, Gibbons *v.* Ogden, 9 Wheat. 1, 8–23.

TWENTY-SECOND.—The subject of interstate commerce in general, and so far as it bears in particular upon the transportation of live stock from State to State, admits of and requires one uniform system of regulation. It is national in scope and can only be made homogeneous and consistent by national authority emanating from Congress. If this be true, important results follow. In the Cooley case it is said: "The power conferred by the Constitution upon Congress to regulate commerce is exclusive, and permits no action or interference by the States in any case where the subject of the power is national, or admits one uniform system of regulation."

Cooley *v.* Board of Wardens, 12 How. 152.

Gibbons *v.* Ogden, 9 Wheat. 16.

TWENTY-THIRD.—The same rule controls in the case of Henderson *v.* Mayor *et al.*

In the Henderson case the following language is used:

"It is said that the purpose of the act is to protect the State against the consequences of the flood of pauperism immigrating from Europe, and first landing in that city. * * * This power, frequently referred to in the decisions of this court, has been, in general terms, somewhat loosely called the police power. It is not necessary for

the course of this discussion to attempt to define it more accurately than it has been defined already. It is not necessary, because whatever may be the nature and extent of that power where not otherwise restricted, no definition of it and no urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution. * * * It is said, however, that, under the decisions of this court there is a kind of neutral ground, especially in that covered by the regulation of commerce, which may be occupied by the State, and its legislation be valid, so long as it interferes with no act of Congress or treaty of the United States. Such a proposition is supported by the opinions of several of the judges in the Passenger Cases; by the decisions of this court in Cooley *v.* Bd. of Wardens, 12 How. 299, and by the cases of Crandall *v.* Nevada, 6 Wall. 35 (73 U. S., XVIII, 745), and Gilman *v.* Philadelphia, 3 Wall. 713 (70 U. S., XVIII, 96). But this doctrine has always been controverted in this court, and has seldom, if ever, been stated without dissent. These decisions, however, all agree that, under the commerce clause of the Constitution, or within its compass, there are powers which, from their nature, are exclusive in Congress; and, in the case of Cooley *v.* Bd. of Wardens, it was said that, '*Whatever subjects of this power are in their nature national, or admit of one uniform system or plan or regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.*' A regulation which imposes onerous, perhaps impossible, conditions on those engaged in active commerce with foreign nations, must of necessity be national in its character. * * * It is equally clear that these statutes may be *and ought to be the subject of a uniform* system or plan. The laws which govern the right to land passengers in the United States from other countries ought to be the same in New York, Boston, New Orleans, and San Francisco. A striking evidence of the truth of this proposition is to be found in the similarity, we might also say in the identity, of the statutes of New York, of Louisiana, and California, now before us for consideration in these three cases.

"It is apparent, therefore, that if there is a class of laws which may be valid when passed by the States until the same ground is occupied by a treaty or act of Congress, this statute is not of that class."

Henderson *v.* Mayor *et al.*, 92 U. S. 259, 269–271.
Chy Lung *v.* Freeman *et. al.*, 92 U. S. 275.

TWENTY-FOURTH.—Again in the case of The Gulf, C. & S. F. R. Co., *v.* Hefley & Lewis, this court says:

"Generally it may be said in respect to laws of this character that though resting upon the police power of the State, they must yield whenever Congress, in the exercise of the powers granted to it, legislates upon the precise subject-matter, for that power, like all other reserved powers of the State, is subordinate to those in terms conferred by the Constitution upon the nation. No urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided conclusively to the discretion of Congress by the Constitution. Definitions of the police power must, however, be taken subject to the condition that the State cannot, in its exercise, for any purpose whatever, encroach upon the powers of the general Government, or rights granted or secured by the supreme law of the land. While it may be a police power in the sense that all provisions for the health, comfort and security of the citizens are police regulations and an exercise of police power, it has been said more than once in this court, that where such powers are so exercised as to come within the domain of Federal authority as defined by the Constitution, the latter must prevail. * * * It is unnecessary to pursue this discussion further. The State statute and the national law operate upon the same subject-matter, and prescribe different rules concerning it. The national law is unquestionably one within the competency of Congress to enact under the power given to regulate commerce between the States. The State statute must, therefore, give way."

The Gulf, C. & S. F. R. Co., *v.* Hefley & Lewis, 158 U. S. 99–105.

National Excludes State Regulation.

Twenty-fifth.—While it was conceded in the brief of the Attorney General of the State of Colorado, in the court below, that the State statute and the Congressional act operate upon the same subject-matter, and that were different rules prescribed by each in relation thereto the State statute must then give way before the Federal law, yet he contended that the Federal act and the State statute are merely supplemental to each other and that both may lawfully be enforced within the same territory. Our answer to this is that the imposition of a burden in addition to that imposed by Congress is just as truly a regulation of commerce as if it were entirely different from and inconsistent with the Congressional act, and that the requirement of an inspection in addition to that provided by Congress is an unnecessary and unreasonable requirement—unreasonable because it assumes that the Federal inspection is insufficient, and unnecessary because one inspection is ample. Hence the State requirement is hostile both to the letter and the spirit of the constitutional provision. As to this see also the case of the Gulf C. & S. F. R. Co. *v.* Hefley & Lewis, 158 U. S. 99.

State Inspection Laws will Suppress Interstate Commerce in Live Stock.

The contention of the Attorney General of Colorado that the Federal act and the State statute were merely supplemental to each other, and that both may lawfully be enforced within the same territory, is utterly untenable. It assumes that the national and State inspectors will always and in every case reach the same conclusion as to

the sanitary condition of the animals inspected. As each set of inspectors is clothed with authority to determine whether the animals are free from disease, the Federal inspectors may, as in the case at bar, conclude that the animals were free from disease, and issue a certificate accordingly; while the State inspectors may reach a different conclusion and refuse a health certificate. This is not only possible, but extremely probable. The fact that "doctors will differ" is so well established that the saying has become an accepted adage. In such a contingency, what would result? If the owner of the animals having a Federal certificate of health proceeded with them through the State towards their destination, he would, having been refused a State certificate of health under the Colorado law, be arrested and thrown into prison, and subjected to a fine of as much as five thousand dollars or to imprisonment to the extent of two years in the county jail, or to both such fine and imprisonment in the discretion of the State court. The cattle would be seized and placed in quarantine for such time as the State inspectors might determine to be necessary. What then becomes of the Federal inspection and the Federal certificate of health, and the regulations of the Department of Agriculture? One of the regulations of the Department of Agriculture is as follows:

"Animals which have been inspected and certified by an inspector of the U. S. Bureau of Animal Industry, and are free from disease have the right to go into any State and be sold for any purpose *without further inspection or the exaction of fees.*"

Record in Case 269, p. 22.

The appellant and plaintiff in error in the case at bar had complied with the Federal law and with all the rules

and regulations of the Bureau of Animal Industry of the Department of Agriculture, and held a certificate to the effect that the 882 head of cattle which he was about to ship into the State of Colorado, "were free from any infectious or contagious disease."

Record in Case No. 269, p. 22.

The conflict between the Federal statute and Federal regulations, and the State statute and State regulations, is not only apparent, but glaring and irreconcilable.

Which must prevail? There is but one answer to this question, and that is found in the Constitution of the United States. Congress shall have power "to regulate commerce with foreign nations, and among the several States." And Congress having this power and having exercised it, the conflicting laws and regulations of a State are mere acts of nullification, and are unconstitutional and void.

Even if the State inspectors should in every instance reach the same conclusion reached by the Federal inspectors, which is improbable, the right to make State inspections and to impose fees for such service, if conceded, would become an intolerable burden on interstate commerce. Live stock shipped from New Mexico to New York must pass through the States of Colorado, Kansas, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, and into New York—eight States. If one State may require a State inspection and State fees, all may do the same thing, and the detention required for making eight inspections and the amount required for paying eight sets of fees, would impose such a burden upon the traffic that it would be impracticable and unprofitable, and the result would be its entire suppression.

For these reasons, if for no others, this court must hold

the Colorado statute and regulations in question null and void, otherwise State inspection laws and State regulations may result in the entire suppression of interstate commerce in live stock.

INTERSTATE COMMERCE NOT SUBJECT TO STATE POLICE POWER.

TWENTY-SIXTH.—In the case of Leisy *v.* Hardin, the view of the court is thus expressed:

"And while, by virtue of its jurisdiction over persons and property within its limits, a State may provide for the security of the lives, limbs, health and comfort of persons and the protection of property, so situated, yet a subject-matter which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by Congressional action. Henderson *v.* New York City, 92 U. S. 259; Hannibal & St. J. R.R. Co. *v.* Husen, 95 U. S. 465; Walling *v.* Michigan, 116 U. S. 446; Robbins *v.* Shelby County Taxing Dist., 120 U. S. 489. The power to regulate commerce among the States is a unit, but if particular subjects within its operation do not require the application of a general or uniform system, the States may legislate in regard to them with a view to local needs and circumstances, until Congress otherwise directs; and the power thus exercised by the States is not identical in its extent with the power to regulate commerce among the States. The power to pass laws in respect to internal commerce, inspection laws, quarantine laws, health laws, and laws in relation to bridges, ferries, and highways, belongs to the class of powers pertaining to locality, essential to local inter-communication, to the progress and development of local prosperity, and to the protection, the safety and welfare of society, originally, necessarily belonging to, and upon the adoption of the Constitution reserved by, the States, except so far as falling within the scope of a power confided to the

general Government. *Where the subject-matter requires a uniform system* as between the States, the power controlling it is vested exclusively in Congress, and cannot be encroached upon by the States; but where, in relation to the subject-matter, different rules may be suitable for different localities, the States may exercise powers which, though they may be said to partake of the power granted to the general Government, are strictly not such, but are simply local powers, which have full operation until or unless circumscribed by the action of Congress in effectuation of the general power. Cooley *v.* Philadelphia Board of Wardens, 53 U. S., 12 How. 299." * * * "The doctrine now firmly established is, as stated by Mr. Justice Field in Bowman *v.* Chicago & N. W. R. Co., 125 U. S. 507:

"That where the subject upon which Congress can act under its commercial power is local in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the State can act until Congress interferes and supersedes its authority; but where the subject is national in its character, *and admits and requires uniformity of regulation*, affecting alike all the States, such as transportation between the States, including the importation of goods from one State to another, Congress can alone act upon it and provide the needed regulations. The absence of any law of Congress on the subject is equivalent to its declaration that commerce in that matter shall be free. Thus the absence of regulations as to interstate commerce with reference to any particular subject is taken as a declaration that the importation of that article into the States shall be unrestricted. It is only after the importation is completed and the property imported is mingled with and becomes a part of the general property of the State that its regulations can act upon it, except so far as it may be necessary to insure safety in the disposition of the import until thus mingled."

Leisy *v.* Hardin, 135 U. S. 100–119.

TRANSPORTATION OF LIVE STOCK IS INTERSTATE COMMERCE.

TWENTY-SEVENTH.—It goes without saying that the transportation of live stock from State to State is not only a matter of general public interest, but in view of the millions of cattle and horses and sheep which are shipped annually through the various States of the Union, it is a subject national in its character, affecting vitally all of the States. It is, therefore, pre-eminently one for regulation by Congress and not by the separate commonwealths. It admits of a uniformity of regulation, and absolutely requires it. No homogeneousness of legislation leading to uniformity of regulation can ever be obtained except through the general Government. To relegate this subject to the determination of the State legislatures would only be to make confusion thrice confounded.

See on this point the case of Leisy *v.* Hardin, *supra.*

TWENTY-EIGHTH.—This fact was manifest to Congress and in consequence thereof there have followed divers enactments in the way of national legislation beginning with the act of Congress approved May 29, 1884, down to and inclusive of the year 1901. See Exhibit A, fol. 41, case 592.

There is no absence of national regulation, no silence on the part of the national Government.

In the case of Hinson *v.* Lott, it is said that Congress has the same right to regulate commerce among the States that it has to regulate commerce with foreign nations, and whenever it exercises that power, all conflicting State laws must give way, and that if Congress has made any declaration covering the matter in question we need inquire no further.

Hinson *v.* Lott, 75 U. S. 148.

Again: In the case of the State of Minnesota against Barber, wherein the invalidity of the Minnesota inspection statute was declared, the court recognized that a State, could not regulate commerce under the guise of an inspection law.

State of Minnesota *v.* Barber, 136 U. S. 313.

And the same doctrine was announced in the Brimmer case.

Brimmer *v.* Rebman, 138 U. S. 78.

Summary.

Twenty-ninth.—We recapitulate the several points upon which we rely for reversal of the judgment below, and which we think may be regarded as fully established by the decisions of this court:

a. The transportation of live stock from State to State is a branch of interstate commerce.

b. The jurisdiction of Congress to regulate interstate commerce is supreme and exclusive.

c. In the absence of Federal legislation on the subject any State may pass inspection and quarantine laws to prevent animals which have contagious or infectious diseases from entering its borders, even though the same may incidentally affect such interstate commerce, provided always such State enactments be reasonable and necessary.

d. When, however, Congress has legislated thereon, the State is precluded from passing any statute on the subject which either conflicts with, adds to, detracts from or varies the Congressional act, whether such statute be denominated an inspection law or not.

e. Congress has legislated thereon in express terms.

f. The Colorado statute adds to, varies and, in some respect, nullifies the effect of the Congressional act.

g. No State may ever, under cover of its police power, establish quarantine or inspection laws beyond the necessities of the case, or beyond what is absolutely necessary for self-protection.

h. The Colorado statute is unnecessary.

i. The interstate transportation of cattle is national in its character and admits of and requires one uniform system or plan of regulation, and is of such a nature as to require exclusive legislation by that body, since uniformity of regulation can only be realized by legislation of Congress.

j. And, finally, State inspection laws and regulations do not supplement and aid national inspections and regulations; but, on the contrary, if the right to enact State inspection laws is conceded when Congress has fully legislated on the subject, as in the case at bar, the effect will be, not only to burden and hinder interstate commerce in live stock, but to effectually suppress it.

Respectfully submitted.

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